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IN THE

# Supreme Court of the United States

**October Term, A. D. 1956**

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STATES OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA,
*Complainants,*
*v.*
STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,
*Defendants.*

No. 2 Original

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STATE OF MICHIGAN,
*Complainant,*
*v.*
STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, *et al.*,
*Defendants.*
STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI and ARKANSAS,
*Intervening Defendants.*

No. 3 Original

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STATE OF NEW YORK,
*Complainant,*
*v.*
STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, *et al.*,
*Defendants.*

No. 4 Original

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## ANSWER OF THE STATE OF NEW YORK, COMPLAINANT, TO THE PETITION OF THE STATE OF ILLINOIS FOR TEMPORARY MODIFICATION OF PARAGRAPH 3 OF DECREE OF APRIL 21, 1930.

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## ANSWER OF THE STATE OF NEW YORK, COMPLAINANT, TO THE PETITION OF THE STATE OF ILLINOIS FOR TEMPORARY MODIFICATION OF PARAGRAPH 3 OF DECREE OF APRIL 21, 1930.

*To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:*

The State of New York, complainant in Original Cause No. 4, by Jacob K. Javits, its Attorney General, presents this answer to the petition filed by the State of Illinois, requesting temporary modification of the decree of April 21, 1930, which enjoins the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them,

> "from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of the annual average of 1,500 cubic feet per second in addition to domestic pumpage."

In support of the allegation in its petition as to the existence of a critical emergency in respect to navigation at Alton Lock in the Mississippi River, the State of Illinois by its duly authorized agents has represented to the State of New York:

(1) The Corps of Engineers, United States Army, St. Louis District has issued a notice of low water conditions (a) which presently hamper navigation on the Mississippi River, in particular passage through the Alton Lock (No. 26), serving, among other places, the Chicago Area, (b) which are expected to become progressively worse to the extent that commercial navigation may come practically to a halt at the lock, and (c) which will seriously affect the

Chicago area especially in respect to shortages of fuel oil and coal.

(2) The Corps of Engineers advises that the maximum legally allowable flow from Lake Michigan is now being utilized.

(3) The Secretary of the Army has advised Honorable Everett M. Dirksen, United States Senator from Illinois, with respect to the problem, in part, as follows:

> "With respect to increasing diversion of Great Lakes Waters, such diversion is now restricted to an annual average of 1,500 second feet plus domestic pumpage pursuant to a decree of the Supreme Court of the United States dated 21 April 1930 (281 U. S. 696). The Court retained jurisdiction 'for the purpose of any orders or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy'.
>
> "Accordingly, no authority is known to exist under which any change in the diversion of water from Lake Michigan could be permitted by this Department contrary to the restrictions imposed by the Supreme Court."

(4) The Acting Assistant Chief of Engineers for Civil Works, Corps of Engineers, has advised Senator Dirksen, in part, as follows:

> "The report of the Board of Engineers for Rivers and Harbors dated June 19, 1956 recommended construction of a dam near Chain of Rocks for the purpose of increasing the depth over the lower sills at Lock and Dam No. 26, Mississippi River, at times of low flow. During the preparation of this report, studies were made of every feasible way of alleviating the condition which develops at Lock No. 26 during low flow periods. No way was found to initiate corrective construction within our present authorities for improvement of

the middle and upper Mississippi River. The construction of the proposed dam to remedy the situation is dependent upon the enactment of authorizing legislation, and subsequent appropriation of the necessary funds."

(5) The State of Illinois is of the opinion that the necessary authorization and funds will be forthcoming at the next session of the Congress, and that the construction and operation of the Chain of Rocks Dam will provide a permanent and sufficient solution of the low-water problems at Alton Lock. If authorized with sufficient funds, it is estimated that the Chain of Rocks Dam could be constructed and in operation not later than September, 1958.

(6) The Deputy Assistant to the President of the United States has advised Senator Dirksen as follows:

"I have looked into the matter of providing an additional diversion from Lake Michigan to meet the low water problem at Alton, Illinois, which you referred to in your letter of October 16.

"I am told, and I understand that you have been so advised by the Secretary of the Army, that the diversion at Chicago is now restricted to an annual average of 1,500 second feet plus domestic pumpage by a 1930 Supreme Court decree. There appears to be no authority under which the Federal Government could increase the diversion as you request in view of the restrictions imposed by the Supreme Court. As you know, the Secretary of the Army is taking all practical steps to alleviate the low water conditions by coordinate and basin wide regulations of all available waters in the Mississippi-Missouri River system.

"The Bureau of the Budget informs me that it is in process of getting additional information from the Corps of Engineers concerning the proposed project at Lock 26, Alton, Illinois. I have asked that every effort be made to conclude all Executive Branch review of this proposal prior to the reconvening of Congress."

(7) The Corps of Engineers, United States Army, has advised the State of Illinois that it will not be necessary or feasible to divert ten thousand cubic feet of water per second in addition to domestic pumpage from the Great Lakes-St. Lawrence system through the Illinois waterway in order to facilitate navigation at the Alton Lock; that the present critical emergency in respect to navigation at Alton Lock can be alleviated by the diversion of substantially less than ten thousand cubic feet of water per second, and that in the interest of navigation not more than approximately six to seven thousand cubic feet of water per second need or should be temporarily diverted.

Therefore, the State of New York admits that a temporary critical navigation condition exists at Alton Lock on the Mississippi River which can be alleviated by the diversion from the Great Lakes-St. Lawrence system of less than ten thousand cubic feet of water per second for a period of not exceeding 100 days.

The State of New York denies the allegation in the petition of the State of Illinois that:

> "The temporary increase in the rate of diversion now set will not adversely affect present lake levels in the Great Lakes-St. Lawrence system or watershed for the reason that the total quantity of water proposed to be diverted is not sufficient materially to affect such levels." (Pet. p. 2)

With respect to the statements in the Petition of the State of Illinois as to the existence of critical conditions on the Mississippi River, other than at Alton Lock, the State of New York alleges that there exist other means of remedying these alleged conditions than by diverting water from the Great Lakes-St. Lawrence system.

Solely because of the aforestated temporary critical emergency in respect to navigation at the Alton Lock, the State of New York does not oppose the petition of the State of Illinois provided that the State of Illinois will stipulate and agree to the following conditions, and to the inclusion thereof in any order of this Court temporarily modifying Paragraph 3 of the Decree of April 21, 1930:

1. The State of New York does not waive any position which it has heretofore taken respecting the injurious or detrimental affect of diversion of water from the Great Lakes-St. Lawrence system and expressly reserves the right to take such position in any future proceedings concerning this subject.

2. The granting of any relief upon the present petition of the State of Illinois will not be used as a precedent by any party for any future request for any additional temporary diversion in excess of the amounts fixed by this Court in its decree of April 21, 1930.

3. The amount of increased diversion shall be restricted to such amount as may be necessary, but shall not exceed 8,500 cubic feet per second.

4. The time during which such increased diversion may be made shall be limited to such period as may be necessary, but not exceeding 100 days from the date of entry of the Court's decree of modification.

5. The amounts and times of diversion as may be necessary to carry out the decree of temporary modification shall be determined by the Corps of Engineers, United States Army.

6. Any increased diversion authorized by the temporary decree of modification shall be and remain under the supervision and control of the Corps of En-

gineers, United States Army during the period for which such increased diversion may be authorized.

7. After the expiration of the period for which the increased diversion may be authorized all the provisions of the decree of this Court heretofore entered in this action on April 21, 1930 (281 U. S. 696) shall be and remain in full force and effect until further order of the Court.

8. The relief granted is based solely upon the petition of the State of Illinois and does not constitute an acknowledgement or recognition of any cause for, or right to relief which may be asserted by any other party to these causes.

9. There is no need for any clarification of the decree of April 21, 1930.

10. The fact that the State of New York does not oppose the petition of the State of Illinois for temporary modification of Paragraph 3 of the Decree of April 21, 1930, shall not be construed as an admission or evidence of the right of the State of Illinois, or any of its political subdivisions or other agencies, to divert any waters of the Great Lakes-St. Lawrence system except as provided in the Decree of April 21, 1930, as modified herein.

Respectfully submitted,

JACOB K. JAVITS
Attorney General of the State
of New York

By: JAMES O. MOORE, JR.
Solicitor General of the State
of New York

December 1, 1956.